IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

WP(C).No. 199 of 2007(W)

OS.61/2004 of SUB COURT, QUILANDY
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PETITIONER:

MELUR SIVA KSHETHRA BARANA SAMITHI,
MELUR, KOYILANDY, REPRESENTED BY ITS PRESIDENT,
GANGADHARAN NAIR, MANGALYA, MELUR, KOYILANDY.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENTS:
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1. K.V. KARUNAKARAN KIDAVU,
S/O. C.K. KANNAN KIDAVU, AGED 80 YEARS,
MELUR AMSOM, DESOM.

2. K.P. RADHAKRISHNAN KIDAVE,
S/O. K.GOVINDAN KIDAVE, FLAT NO.330, BLOCK NO.10,
VIDYA NAGAR, KASARGODE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.199 OF 2007

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DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the first defendant in O.S.61 of 2004 on the file of Sub Court, Koyilandy. Out of four plaintiffs, plaintiffs 1 and 2 died. As per I.A.1923 of 2006, plaintiffs sought to implead the 5th plaintiff as an additional plaintiff. Learned Munsiff under Ext.P3 order allowed the application. I.A.1924 of 2006 was filed for consequential amendment of the plaint. Under Ext.P4 order that was also allowed. First defendant is challenging Exts.P3 and P4 orders in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for the petitioner was heard. The argument of the learned counsel appearing for the petitioner was that in the affidavit in support of I.A.1923 of 2006, it is admitted that the senior most member is not 5th plaintiff who was impleaded under Ext.P3 order and therefore the statement in Ext.P3 order is incorrect. Learned counsel also argued that before issuing notice to the

proposed plaintiff, learned Munsiff should not have impleaded him. It was also argued that Exts.P3 and P4 orders are not speaking orders.

3. On hearing learned counsel for the petitioner, I do not find any reason to interfere with Exts.P3 and P4 orders. The suit was filed by plaintiffs being the senior members of the Tarwad. The argument of the learned counsel appearing for petitioner was that no Tarwad is in existence. That is a fact to be decided in the suit and not in the application. Under Ext.P3 order, learned Sub Judge did not record that 5th plaintiff is the senior most male member of the Tarwad. It is only stated that he is a senior member. It is factually correct also. There is no necessity to issue notice to the proposed party before impleading him in the suit. Therefore on that ground also there is no infirmity in Exts.P3 and P4 orders. Petitioner is entitled to file written statement.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-